

# McGill reporter

## STANLEY GRAY DISMISSED

Controversial political science lecturer Stanley Gray has been dismissed from his teaching post at McGill University. This was the effect of the judgement handed down last Friday, August 15 by the Arbitration Committee in the dispute between Mr. Gray and the University.

The three arbitrators were Walter Tarnopolsky, dean of law at the University of Windsor; Noel Mailloux, professor of psychology, University of Montreal; and André Morel, professor of law, also of the University of Montreal.

The committee decided "that Mr. Gray impeded the business of the University affecting adversely its well-being because the manner and the circumstances in which Mr. Gray acted constituted gross misconduct."

"For reasons discussed," the 39-page report asserted, "we come to the conclusion that there is sufficient ground for disciplinary action. We believe it would be naive at this time, in view of Mr. Gray's declared intention to go on, to come to a conclusion that he could be persuaded that his course of

conduct is unacceptable, and that he should instead resort to his powers of intellect and expression to achieve his aims. Therefore, we reluctantly conclude that there is sufficient ground for dismissal."

The committee also declared that the University should pay Mr. Gray the equivalent of his salary and the University's contribution to his pension for the balance of the 1969-70 academic year.

Following receipt of the Arbitration Committee's report, McGill Principal H. Locke Robertson issued the following statement:

"When the University and Mr. Gray agreed to the composition of the Arbitration Committee and to submit our differences to it we also agreed to abide by its decision and that is exactly what the University will do.

"Mr. Gray stands dismissed and has so been notified."

Interviewed by the Montreal Star, Mr. Gray cited the committee's decision as "clearly a political decision despite pretentious claims to the contrary."

"Had I promised to be a good boy," he said, "as both McGill and the commission wanted, the outcome would have been different."

"I intend to resign from McGill and leave the English community anyway, because there's no hope or political future for progressive change there," he said.

Mr. Gray plans to stay in Montreal to work with politically independent French left-wing groups, according to the Star's report.

**The text of the Gray-McGill arbitration committee report, in full, begins on page 3.**

### special issue

On October 15, 1969, the McGill Reporter will publish a special issue devoted entirely to the Gray case. Highlights of the hearings, excerpts of the summations, and a reprint of the Arbitration Committee's report and decision will be included. Comment by well-known academics and intellectuals, and an interview with Stanley Gray, will also be printed in this issue. The Reporter is interested in hearing from anyone who might wish to contribute commentary to this issue.

## McGill gives major boost to educational reform and innovation

McGill University has launched a major new drive to encourage reform and innovation in learning and teaching methods at the University level. The University today announced the establishment of a Centre for Learning and Development to be directed by Psychology professor Dr. Marcel L. Goldschmid.

The threefold objectives of the Centre are: to assist in the evaluation of existing learning and teaching methods at all levels of education; design and evaluate new learning systems; and stimulate experimentation with and encourage adoption of new learning systems at McGill and the community at large.

To give teeth to the programme, the Centre has been provided with a \$60,000 budget. Furthermore, the University provided a \$100,000 fund to support experiments in learning and teaching methods. The Centre will evaluate all applications for financial assistance, and a university committee will decide on the allocations.

The Centre for Learning and Development grew out of an earlier proposal to establish a "University Department of Higher Education."

Dr. Goldschmid describes the function of the Centre as "a systematic application of behavioral methodology and instructional technology to the development of conditions for optimal learning."

In general, the Centre's immediate activities will proceed along the following three major lines: information and stimulation, consultation and developmental research. The first goal is to increase awareness among students and staff, across campus, of the critical need to re-evaluate current teaching and learning methods as well as to offer constructive alternatives both on a conceptual and practical level.

"To accomplish this goal," he said, "we shall submit articles to campus newspapers, issue our own newsletter, organize teach-ins, develop films and television programmes, hold conferences and workshops, as well as staff and student colloquia. In many ways these may be the most crucial activities of the Centre, as motivation among both faculty and students to effect changes in educational procedures depends upon awareness of existing problems and of viable alternatives."

The second goal is to actively assist staff and students who propose innovations and experimentation in designing and evaluating new courses. The Centre will offer individual and group consultation, as well as material

resources in order to help implement new proposals.

The third major goal is to develop and assess new learning methods as conceived by the Centre staff themselves, as well as to pinpoint university structures and programmes which are conducive to educational progress and those which block it.

Dr. Goldschmid has high hopes that the Centre will be able to contribute to and benefit from similar activities at other Quebec universities. This will be encouraged by exchanges of information, consultation, joint conferences, and close association through the Quebec Conference of Rectors and Principals.

The Centre will seek close collaboration with departments whose functions are related to the Centre's activities, particularly the Faculty of Education, the Instructional Communications Centre, and the Computer Centre.

While at present the Centre will give priority to McGill's educational procedures, it is hoped that in the long run other fields of education can be studied. "Pre-school elementary, high school, and adult education are all intimately interrelated with university education, particularly with respect to preparation, reinforcement contingencies, and teacher training," Dr. Goldschmid stated.

"It is clear," Dr. Goldschmid added, "that the new Centre will depend on the enthusiasm and co-operation of students, faculty, and administrators. No such Centre in any university can bring about a more stimulating and effective environment without active support and involvement of the entire campus. We invite all members of the university to critically evaluate current educational procedures and to work with the Centre for constructive reform as well as to communicate ideas and experiences to the Centre, so that we can share them with the whole community."

Until August 28 the Centre's telephone number is loc. 4690, and after that date it will be loc. 5156.

Dr. Marcel Goldschmid received his early education in Zurich, Switzerland. He obtained his Ph. D. in Psychology from the University of California at Berkeley. Before coming to McGill in 1967, he taught at U.C. L.A.

In addition to the director, the Centre will be staffed by two or three other professors and three research assistants.

The Centre is part of the Psychology department and is located in the Stewart Biological Building.



**Dr. Marcel Goldschmid**



## curriculum changes for med, architecture degree

Changes in curriculum this fall at McGill, apart from the temporary offering of CEGEP-equivalent studies will include:

- a fourth-year medical clerkship which will eliminate for many students the rotating internship;
- introduction of a non-professional degree in architecture; and
- two experimental student-taught and administered courses.

Introduction of the CEGEP-equivalent studies is, of course, the widest-ranging change — affecting all undergraduate and most graduate faculties. In September, McGill's former first year will be changed in various ways by the different faculties to become first year college equivalent studies.

McGill will first begin offering its three-year programmes for the bachelor's degree in autumn 1971 when the first generation of English-language CEGEP or CEGEP equivalent students have graduated. Entrants will have to have the academic CEGEP education or its equivalent.

The University will offer the CEGEP-equivalent programme until more English-language CEGEPs are opened, or for a maximum of four years.

Professor E. Hon. Pounder, who headed the University Senate's Committee on Collegial Studies feels that some of the other changes about to be initiated are occurring partly because of the general re-thinking the CEGEPs have caused in various faculties.

For example, the School of Architecture is instituting its B.Sc. (Arch.) mainly because there have evolved over the years a number of activities related to architecture, which require knowledge of some of its technical aspects "but which do not require full professional qualification as an architect" — for example, landscape design.

But the programme is being founded also because McGill architecture students would have seven years of study for a first degree. Now, even those wishing the professional degree will first take the B. Sc. Another feature is the gradual introduction of elective courses in the first years of the architecture studies.

Introduction of electives plays an important part, too, in the changes in the medical faculty. It and other recent innovations have the aim of producing doctors who are better equipped for continuing self-education; a process which becomes more and more important with the accelerating progress of medical and related sciences.

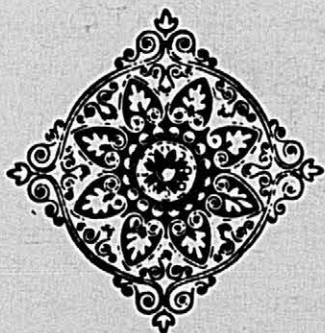
Since 1967, McGill medical students have clinical training from their second year on instead, of, as formerly, from the third. The 12-month clinical clerkship for fourth-year students is introduced with the objective of further strengthening the clinical undergraduate programme.

Now, fourth-year students will be formally associated with hospital teaching units. According to Dr. R. Neil MacDonald, Associate Dean for Medical Education, this will not only avoid the "plateau year" which fourth formerly was, but will allow most students to directly enter their post-graduate field if they so desire.

He feels that the plan not only shortens but improves the medical education. He notes also the beneficial effect on Canada's current medical manpower shortage.

The student-taught courses are a fourth-year one on the implications of psychology which will be taught by upper-year psychology students, and a second-year problem-oriented English course which will be taught by fourth-year students in the department. In both cases, the students will work with staff advisors.

In the case of the English course, the senior students who teach will receive a half credit for doing so. The second-year class will be in seminar form with the student-teachers examining the "validity and credibility" of the research discussed in their own fourth-year level seminar on the same topic. The first few lectures of this course will be given by department chairman, Professor Donald Theall.



## inter-university consortium suggested to conduct pollution fight

Quebec universities have launched a study to determine the possibility of setting up a central agency to co-ordinate research on water and water pollution throughout the province.

The Conference of Rectors and Principals of Quebec Universities, which has been examining the lack of coordination in this area, recently announced the formation of a four-man committee to carry out the project.

The Conference pointed out that six universities, five provincial ministries, one federal ministry, and many other governmental and private organizations are currently doing research in this field. As well, the newly-established University of Quebec plans to set up a centre for water research.

The creation of the four-man committee followed the report of another committee which took an inventory of research on water at provincial universities.

The committee found there are 228 research projects at the six Quebec universities. The 51 professors who are spending their total research time on these projects are receiving \$1,000,000 in grants and 350 scientific papers have resulted in the last three years.

The committee, presided over by Larkin Kerwin, vice-rector of Laval University, also found that 218 courses are given which deal with one or more of the bio-physical or socio-economic aspects of water.

The new four-man committee is made up of Louis Rousseau, associate director of higher education for the Department of Education; Louis Berlinguet, vice-president of the University of Quebec; Paul Lacoste, vice-rector of the University of Montreal; and Alain Soucy, associate professor of civil engineering at Laval University.

## morgan arboretum

The Morgan Arboretum Association has a new president. He is R. E. Kirkpatrick, General Manager, Woodlands Operations, Consolidated-Bathurst Limited. Mr. Kirkpatrick succeeds Dr. Fred A. Harrison, who held the position for several years.

The changeover in leadership took place at the Association's annual meeting held at Macdonald College on June 5.

Other officers elected at the meeting were Dr. Vernon E. Johnson, Honorary President; T. R. Lee, Vice-President; and W. C. Shipley, Secretary-Treasurer.

In his outgoing address, Mr. Harrison spoke of the considerable progress achieved at the Arboretum since the land was first acquired in 1947. He said the Arboretum is considered by Forestry officials in Quebec and elsewhere as a model for this kind of development.

Mr. Harrison referred to the formation of the Department of Woodlot Management in 1958 as one of the most important highlights of his association with the Morgan Arboretum. The Department, he said, has been a very significant factor in assisting the farmers of Quebec to obtain more profitable utilization of their woodlots.

Mr. Harrison also praised the imagination and initiative of those at Macdonald College who were responsible for putting forward the concept of turning Macdonald into a Faculty of Resource Development.

It was learned that the Morgan Arboretum received some 25,000 authorized visitors last year, made up mostly of school children.

## farm days 1969

On two consecutive days in September, MacDonald College welcomes visitors to its Farm area by holding identical Open House programs. An information Center will be set up in the main barn area of the farm. All livestock areas, and buildings as well as the farm fields, will open to visitors. Tours of the Farm will leave the Farm Center and at the main points of interest, guides will give details on the crops, livestock, etc. and answer visitors' questions.

In addition to the tours, visitors will find displays presented by the Agronomy, Animal Science, Engineering and Soil Science Departments.

The Agronomy Department has specially designed plots to demonstrate field crop practices and as well a display on Corn Production Practices. The Animal Science Department displays will feature the Dairy Herd Analysis Service and the Feed and Forage Testing Service. All 18 D.H.A.S. Field Supervisors are expected to be present to greet subscribers who now number over 1,200 in Quebec alone.

The Engineering Department will use the livestock judging arena to display forage equipment and forage handling methods. The Soil Science Department displays will feature the Land Use Planning Service and the Soil and Plant Tissue Analysis Service used in determining fertilizer recommendations. At the Farm Center, a film on farm safety will be shown. Arrangements will be made to have a mobile canteen at the Farm Center for those who require light snacks and soft drinks. Visitors are encouraged to bring a picnic lunch.

## centre for continuing education instituted

McGill's Centre for Continuing Education will institute training this fall for a new career — technician in psychology.

The technicians, who will primarily be university graduates with social science backgrounds, will be able, upon graduation from the one-year course, to help clinical psychologists in a number of ways, thus freeing them from tasks that can be done by a less highly-trained person.

For example, technicians will be able to administer and score objective psychological tests. Some may be employed in psychology research laboratories, or in placement bureaus. Others may assist in remedial work including counselling and rehabilitation. The training will be directed toward work in hospitals.

Entrance requirements will be kept somewhat flexible, according to Dr. E. C. Webster, Director of McGill's Centre for Continuing Education. For example, some nurses or hospital technicians considered to have "the professional equivalent" of the B. A. could be admitted.

The Centre is running the program in connection with McGill's Department of Psychology. Director will be Dr. A. A. Surkis, chief psychologist at the Montreal General Hospital, and lecturer in the Department.

The initial class will be restricted to 16 students who will participate in a full-time orientation week late in September, then spend two evenings a week at McGill until May 1.

From December 1 until May 1, students will work in a full-time "practicum", under supervision, at various institutions, with each student serving at two locations.

Courses taken will include personality, learning theory and re-education; statistics, tests and measurements; and professional problems. In the hospital settings, students will observe patients, learn to give and score tests, and work with remedial and research procedures etc.

Dr. Webster, himself a psychologist, says the program is the first of its kind in Canada "and should serve a very real community need." He points out that five years ago the Couchiching Conference on Professional Psychology "examined the role of the clinical psychologist and agreed that something of the kind now being introduced was necessary if clinical psychologists were to be freed to perform the services for which they are best qualified.

The program has been scrutinized and approved by the Corporation of Psychologists of the Province of Quebec, after being developed by McGill's Department of Psychology in 1967-68. The Corporation will study early graduates and make further recommendations.

Though actual jobs must still be developed, Dr. Webster is optimistic since the program does have the support of the Corporation, to which all psychologists in the province are required by law to belong.



## text of the Gray-McGill arbitration committee report

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
CITY OF MONTREAL  
COMMITTEE OF ARBITRATION

### DISPUTE BETWEEN:

THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING (MCGILL UNIVERSITY), a body corporate and politic, having its principal establishment in the City and District of Montreal, Province of Quebec,

### OF THE ONE PART;

— and —

STANLEY GRAY, University Lecturer, of the said City,

### OF THE OTHER PART.

### THE ARBITRATORS:

WALTER TARNOPOLSKY, Dean of Law, University of Windsor, Chairman.

NOEL MAILLOUX, Professor of Psychology, University of Montreal, Member.

ANDRE MOREL, Professor of Law, University of Montreal, Member.

### COUNSEL:

Me. P. LAING, Q.C., Me. J. K. HUGES-SEN, representing McGill University.

Me. R. G. BURNS, Me. J. DESMARAIS, representing Stanley Gray.

### AWARD OF THE ARBITRATION COMMITTEE

This Committee was seised of the above-mentioned dispute pursuant to an agreement to arbitrate dated February 20th, 1969, confirmed by a submission to arbitrate dated March 26th, 1969. The issues to be determined by this Committee were thereby agreed to be those set out in a letter from Dr. H. Locke Robertson to Mr. Stanley Gray, dated February 18th, 1969:

You, being a member of the teaching staff of the University, are hereby informed that I recommend that you be dismissed from the University for the following reasons, namely; for having wilfully impeded the business of the University

1. in attempting to disrupt a meeting of the Nominating Committee of the Senate convened on the afternoon of the 24th January, 1969 in the Administration Building on campus: by forcing yourself into the meeting room knowing that it was planned to hold a closed meeting and refusing to leave the area when required to do so by the Principal in the exercise of his duties; and
2. in disrupting the meeting of the Board of Governors convened on the afternoon of the 27th January, 1969, in the Administration Building on campus: by forcing yourself into the meeting without presenting an admission ticket, participating with students during the meeting in a disorderly and noisy demonstration that prevented the transaction of the meeting's business and refusing to leave the meeting when required to do so by the Chancellor and the Principal, both then in the exercise of their duties, following a resolution of the meeting, that spectators should withdraw; and
3. in disrupting a meeting of the Senate convened on the afternoon of the 5th February, 1969 in the Leacock Building on campus by participating with students during the meeting in a disorderly and noisy demonstration that prevented the transaction of the meeting's business;

the whole constituting conduct that affected adversely or was likely to affect adversely the general well — being of the University.

I invite you to agree, in writing, with the University to submit the question to arbitration in accordance with the C.A.U.T. Policy Statement on Academic Appointments and Tenure as set forth in the attached agreement, by signing and returning the same.

This offer is open only until 5 p.m. on February 25 1969.

Our award will deal with these issues in three parts. In Part 1 we will determine whether in our opinion the three charges listed in the letter of February 18th correctly describe Mr. Gray's involvement in the events of January 24th and 27th, and February 5th. In Part 11 we will determine whether Mr. Gray wilfully impeded the business of McGill University in such a way that his conduct affected the well-being of the university or was likely to so affect it because it constituted gross misconduct. In Part 111 we will render our disposition of the case.

### PART I

1. Is Mr. Gray's involvement in the three events of January 24th, January 27th, and February 5th, 1969, correctly described in the three charges listed in the letter of February 18th, 1969?

#### A. NARRATIVE OF EVENTS

On the basis of the written and oral evidence presented at the hearing, the Committee finds that the pertinent facts surrounding the three events are as follows: Nominating Committee of Senate

At about 1:30 p.m. on the afternoon of January 24th, a group of students and Mr. Stanley Gray gathered in the Student Union in preparation for attending at the meeting of the Nominating Committee of Senate scheduled for 2:00 p.m. The intention of the group gathering in the Student Union was to confront the Nominating Committee with two demands: (1) the Committee should meet in open sessions; (2) students should be added to the selection committee for the nomination of new Deans.

A few minutes before 2:00 p.m. this group (about thirty-five in number) came up to the fifth floor of the Administration Building to the area known as the Principal's reception area (Room 512), and entered Room 511 (known as the planning office) where the meeting of the Committee was scheduled. Mr. McDougall, the Secretary of the Senate, came into Room 511 and deposited his papers and other necessary documents at the table where the Committee was scheduled to meet. Mr. McDougall informed the group that the meeting which was about to take place was not an open meeting, and that they were not allowed to enter. His remarks to the group must have been firm and loud enough for the Principal to be able to hear them through the closed door between his office and Room 511. However, the group of students and Mr. Gray proceeded to discuss their plan of operation. Two of the students had sat in chairs at the meeting table. A decision was made, however, that the group should not occupy the chairs which would be required by the Nominating Committee, but would instead stand around the table.

In the meantime, the Principal was in his office in the adjoining room. He had been forewarned by Mr. McDougall some minutes before 2:00 p.m. that there would be some interference with the meeting of the Nominating Committee. The Principal

heard the group in the next room, and Mr. McDougall speaking to them in a loud voice (the Principal said he could hear him shouting). He called his secretary and instructed her to invite the members of the Nominating Committee as they arrived not to go into Room 511 but to convene in his office in order to discuss whether the meeting could be held and what should be done.

At least one member of the Nominating Committee, Professor Yaffe, tried to enter Room 511. As he was entering the room the group shouted, apparently in jest, "We want Yaffe." His reply was, "What will you do with me?" Apparently he did not find out, because he proceeded back out through Rooms 512, 503, 506, 508, and into the Principal's office, Room 509.

When it was evident that the Nominating Committee was not going to enter Room 511, the group of students, led by Mr. Gray, followed the path described above, and into the office of the Principal's secretary. Mr. Gray and a student came up to the door opening into the Principal's office and asked whether a meeting of the Nominating Committee was taking place. The Principal and Vice-Principal Oliver told Mr. Gray that he was not allowed in and that he should leave. Mr. Gray testified that the Principal told him that it was a private meeting: while the evidence of the Principal was to the effect that it was a closed meeting. In any case, Mr. Gray refused to leave, and the Principal got up and addressed himself directly to him. He said, "Mr. Gray, I order you to leave." Mr. Gray asked why he was being addressed. The Principal again repeated his remarks which were to the effect, "I order you to leave my office you have no business here — leave." Mr. Gray replied that he would not leave without first consulting the group he was with.

After some discussion, the group left the office of the Principal's secretary, went back out through Rooms 508 and 506 to Room 512 (the reception area). In the meantime, the door between Rooms 512 and 511 had been locked and the members of the Nominating Committee, who had by then gathered in the Principal's office, proceeded into the meeting room (Room 511). The students and Mr. Gray discussed what they should do next, and decided to come back up to the Principal's office through the office of the Principal's secretary. Mr. Gray deliberately stayed at the back of the group. They were stopped at the door by Vice-Principal Oliver. At this point, a discussion of about fifteen minutes ensued with Vice-Principal Oliver as to whether or not the meeting should be open. During this discussion Mr. Hyman, a student member of the Nominating Committee who arrived at this moment, was told by Vice-Principal Oliver that he could pass through and join the meeting. However, he did not do so. The Principal then came up behind Dr. Oliver and again ordered the group to leave. There was some attempt by the group to discuss the issue of openness with the Principal, but the evidence was that he again ordered them to leave.

Mr. Hyman, accompanied by the student group and Mr. Gray, went back out through Rooms 508 and 506 to Room 512. Mr. Hyman knocked on the door to Room 511, which had been locked, but was not allowed to enter through it. He then turned around, retraced his steps and came back through the Principal's office, again accompanied by the group and Mr. Gray. A number of students followed Mr. Hyman right into the meeting room, but after some discussion they were persuaded to leave Room 511 so that the Committee could discuss the issue of openness. The group and Mr. Gray then sat and stood around in the Principal's office. They discussed whether they should in fact wait outside the meeting room or go in. Mr. Gray testified that although he was in favour of entering the meeting room, the decision of the majority was to wait outside. There also was some discussion as to whether the Principal would call in the police or impose other sanctions, but no move was made to leave the premises.

Meanwhile, at about 2:40 p.m., the Nominating Committee meeting was finally called to order. Although Mr. McDougall, as Secretary of the Senate, had drawn up an agenda, it was not adopted and the Committee proceeded instead to discuss the issue of openness. On several occasions there was a knock on the door connecting the Principal's office to Room 511; on one or two of these students opened the door to Room 511 and asked the Nominating Committee how things were coming, although on each occasion they were persuaded to withdraw; once Professor Anhalt spoke to the students at the door and asked them to be patient and to wait for the results; on one or two occasions Mr. Hyman left the meeting room to join the group in the Principal's office and to give them, in Mr. Gray's words, "a running account of what was happening."

During the meeting of the Nominating Committee, Vice-Principal Oliver informed those assembled that the Committee could not vote on its own in favour of an open meeting. Such action could only be taken by the Senate itself. After about an hour the Committee voted six to four in favour of recommending to the Senate that the Nominating Committee should be permitted to hold open sessions.

There are some conflicting accounts as to the atmosphere in the meeting. On the one hand, Mr. Hyman claimed that this was the best discussion of the issue that he had ever heard. On the other hand, at least two faculty members of the Nominating Committee deplored the circumstances under which the Committee was meeting, although they did not indicate that their positions on the issue were altered because of the presence of the group. Following the vote on the motion to recommend openness to the Senate, the meeting adjourned at 3:35 p.m. The decision was then announced to the group in the Principal's office and this group left. The resolution of the Nominating Committee was submitted to the Senate, but on February 5th the Senate turned down the request.

### Meeting of the Board of Governors

Late in the year 1968 it had been announced that the first public meeting of the Board of Governors would take place on January 27th, 1969. In fact, this would seem to be the first open meeting of a Board of Governors of a Canadian university.

Some days before January 27th, a group known as the SOCIALIST ACTION COMMITTEE (SAC) drew up a circular of demands to be presented to the Board of Governors. This circular (Document U-9) was drawn up by several people, including Mr. Stanley Gray. Although it included a number of items on the second page, the first page was an open invitation to the university community to "Confront the Board of Governors" with three main demands: (1) Student housing should be financed out of "the Board of Governors' \$100 million investment fund." (2) The Faculty of Management should be abolished and the site of the proposed Management building be used for student co-op housing. (3) The Governors connected with Noranda Mines (one was singled out by name) should be removed forthwith from the Board. Meanwhile, another group known as the 27th of January Movement joined with the SAC for the purpose of presenting the first two demands submitted by the SAC. It should be noted that according to the testimony of Mr. Stanley Gray, these demands and the action contemplated in presenting them, was planned by him and several others to be part of the forthcoming "Opération McGill" which, he testified, was conceived a few weeks earlier.

According to arrangements that had been made beforehand, some seventy-five people, who had responded to the invitation to "Confront the Board of Governors," met in the Student Union. By the time this group reach-

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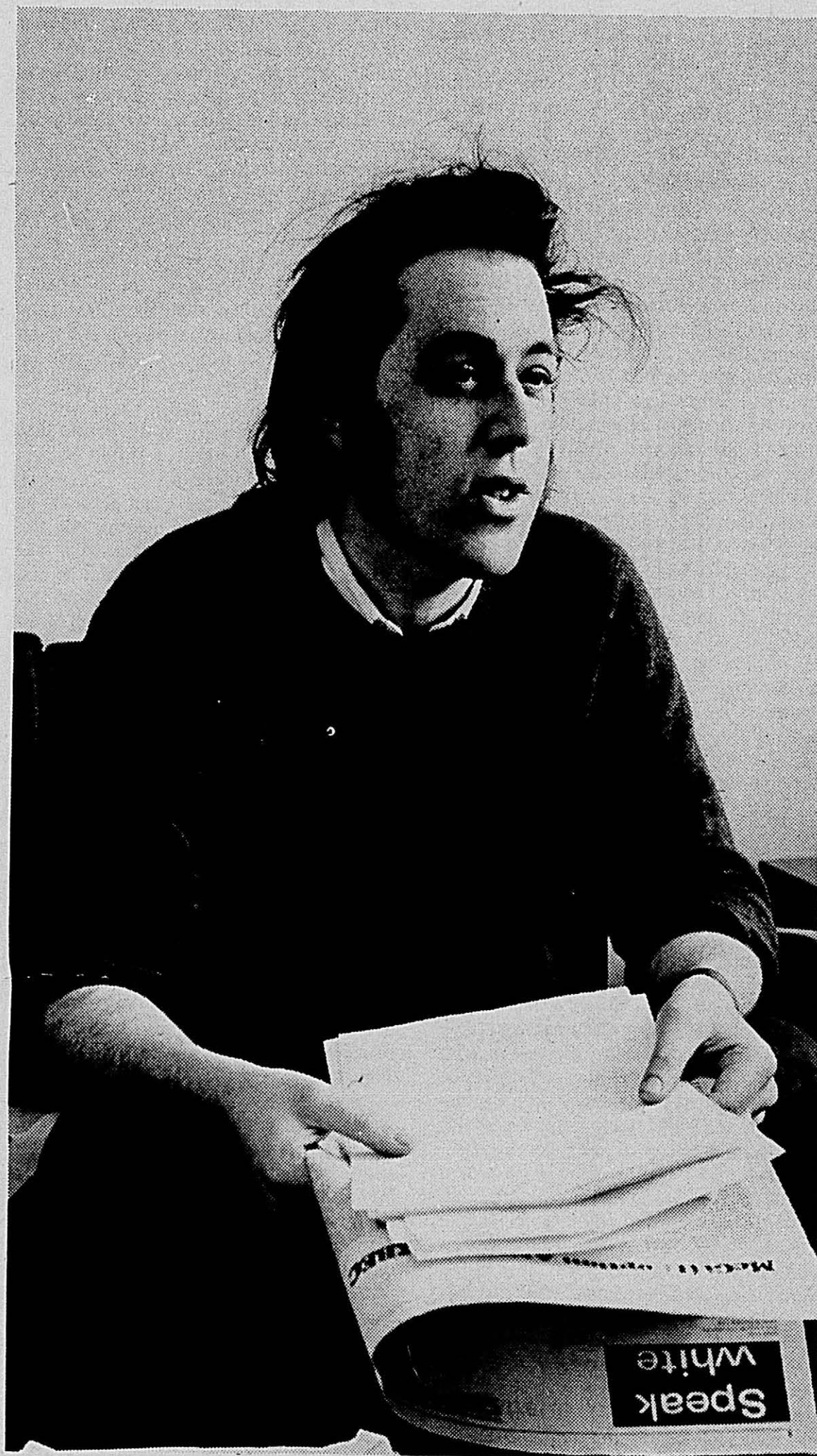


ed the Administration Building, on the sixth floor of which the Board of Governors' meeting room is located, there were about one hundred and fifty students and Mr. Gray.

There were two entrances to the corridor outside the meeting room — one was by of the elevator, and the other from the stairwell. Prior arrangements had been

dent who had obtained several, waved this ticket through the glass panel in the door. However, the security guards refused to open the door.

A number of the students who had obtained entry to the sixth floor by coming up the elevator and presenting their tickets, advanced towards the door to the stairwell which was blocked by the security guards.



made to issue up to thirty-six tickets to spectators who would be permitted to gain entrance to the sixth floor by the elevator. Since thirty-six was the seating capacity in the spectator area of the Board Room, and since the elevator was to be the only permissible means of getting to the meeting room, the door at the top of the stairwell leading to the corridor in front of the meeting room was locked. There were security guards standing around in the corridor and at the doorway to the meeting room, asking for tickets. Some students and members of the press, who had obtained tickets to attend the meeting, came up the elevator and entered the meeting room some time prior to the scheduled four o'clock meeting time.

In the meantime, the group of about one hundred and fifty proceeded to the sixth floor by using the stairwell. This group knocked on the door. Mr. Gray, having received a ticket of admission from a stu-

There was some scuffling and shoving, and the security guards were overpowered (the words used in a newspaper report by a student reporter, Mr. Alboim, was "bowl-ed over"), and the door was opened. At this point, the group in the stairwell entered the sixth floor with Mr. Gray in one of the front ranks. As they came into the meeting room they were chanting slogans: "Ban the Board," "Pouvoir ouvrier," "God save Noranda Mines," and others. Due to the size of the room the students stood or sat in various places around the room, some on unoccupied chairs in the area reserved for the Governors, and some sat on the windowsills.

The Chancellor called the meeting to order and the group quietened down to what has been described as the murmur of a large crowd. Although at this stage it was possible for the Chancellor to be heard, it would appear, as one of the student witnesses testified, that there was "never a respectful silence."

The Chancellor welcomed the new Gov-

ernors, pointed out that the Board's instructions with regard to good order and decorum of spectators had obviously not been observed, and asked the Governors whether they felt they could proceed. It was decided to proceed with the meeting. The Chancellor called for additions to the agenda. At this point Mr. Peter Foster, a student member of the SAC who acted as spokesman, started to read aloud the three items of the SAC programme. The Chancellor replied that Mr. Foster was out of order, and told him that if he wanted to get items on the agenda he could do so by writing to the Secretary of the Board. The agenda was adopted as circulated.

The Secretary was called upon to read a tribute to a deceased Governor, but after the first three or four words Mr. Foster again interrupted, was again called to order, and the student group then broke out into shouts and jeers. There was an exchange of demands being chanted by the student group and Mr. Gray on the one hand, and various orders from the Chairman for quiet and order. The crowd, however, did not heed his request and the Board of Governors then moved that all spectators be required to withdraw. There was no response to this resolution. The Principal got up from his chair, walked over to the crowd, stood in front of Mr. Gray, and advised him and the group that this was a serious matter and that they should withdraw. The crowd refused, and shouted back that the Governors' behaviour was incorrect and disgusting. The Principal then ordered the group to leave and to terminate its demonstration. Mr. Gray's reply was, "We will terminate you." The chanting continued and insults were exchanged between various students and Mr. Gray on the one hand, and various Governors on the other. At 4:15 p.m. the Chancellor declared the meeting terminated, and the Board of Governors filed out to further chants like the ones described above, and others such as, "Good-night ladies."

#### The Senate Meeting of February 5th

Following the events of the Board of Governors' meeting, members of the SAC and the 27th of January Movement joined together to form the Radical Students Alliance (RSA). Although it seems that the RSA, as the SAC and the 27th of January Movement before it, had no elected leaders as such, Mr. Gray was considered to be one of the four or five leaders of the group, as he had been of the SAC, and other radical student groups before that. The RSA discussed the presentation of certain demands to the Senate of the University. A few days before February 5th, a split developed in the RSA. There was agreement on the presentation of a number of demands at the Senate meeting, but Mr. Gray and a number of other RSA members felt these were not strong and important enough unless a further one were added, which called on McGill University to admit all qualified CEGEP graduates who would apply for the coming academic year. On the night of February 4th, by a bare majority, the RSA decided that the CEGEP demand should not be included. At this point Mr. Gray, and the minority who had lost, split off and took no further part in the organization of the programme.

On the morning of February 5th, the RSA demands were published in the McGill Daily. At the Senate meeting itself, two of the student Senators, Mr. Hajaly and Mr. Hyman, moved that the RSA be permitted to read out its programme. Another Senator pointed out that since the programme had been printed in the McGill Daily that morning, it should be taken as read. A motion was then passed to refer the proposal to the Steering Committee for consideration for assignment of a place on the agenda.

Mr. Gray had entered the Senate meeting room before the meeting started and sat in the spectator chairs to the left. Shortly after, he moved towards the back of the room in the general area between the chairs

occupied by the Senators, and those reserved for spectators. The evidence is conflicting as to where Mr. Gray was at this time. It seems that no two witnesses could agree on his exact location. The only explanation possible in view of the different locations suggested, and in view of the fact that several of Mr. Gray's witnesses did indicate that he was moving around, was that Mr. Gray did not remain in one place, but generally moved back and forth through the area between the Senators and the spectators.

Not too long after the Senate had voted that the RSA not be permitted to read out its demands, a group of students gathered in the area to the left rear of the chairs occupied by the Senators. There was some whispering and murmuring and a student, Mr. Alan Feingold, was urged to read out the demands. Mr. Feingold, although part of the minority group which was not in favour of reading out the demands if no reference was made to CEGEP's, was pushed to the front of the group and proceeded to read in a loud voice.

There is conflicting evidence with respect to Mr. Gray's participation in this manifestation. Mr. Gray and the witnesses on his behalf point out that he had split with the majority, and had opposed the presentation of the demands in their modified form, and therefore, they stated, he could not be part of the group. Mr. Gray himself indicates that although he was walking back and forth and did gesture to some students to approach him in order for him

to find out what was happening, he was not really a part of the group. However, the Principal, who was sitting at the head table facing in the direction of Mr. Feingold and the group which had gathered around him, testifies that he saw Mr. Gray at or near the centre of the group gesturing towards students in the spectator area to gather around him behind Mr. Feingold. Vice-Principal Shaw, who was sitting in the last row of chairs reserved for Senators, at a distance of about six to ten feet from the area where the group gathered, testified that he was watching the group forming, and that Mr. Gray was at about the centre of the group and gesturing to students in the spectator area to join him.

It should be pointed out that there is no real conflict of evidence with respect to the question whether Mr. Gray was in a group behind Mr. Feingold. No witnesses on Mr. Gray's behalf stated specifically that Mr. Gray was not in the area. The most that was said was that he was at the back of the group back of Mr. Feingold. No witnesses on Mr. Gray's behalf testified that Mr. Gray made no gestures. They merely said he could not have formed up or coalesced the group. Mr. Gray himself said he may have gestured, but if so it was merely for the sake of calling certain individuals who were in the spectator area to come over to where he was so that he could ask them some questions about what was going on. The only conflict of evidence is over the more minor question of whether Mr. Gray was in the centre of the group when it was forming, and over the more important question whether he deliberately played a part in forming it. We will deal with this question in the next part of this report.

In any case, the whole affair took only a few minutes and, on motion of the Senate, the spectators were required to leave the meeting room. The evidence seems clear that Mr. Gray was one of the first to obey the resolution of the Senate and to leave the meeting room. The Senate did, then, adopt a motion declaring the event to be a disruption of university business.

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## B. ANALYSIS OF EVENTS

### 1. Nominating Committee of Senate

From the above survey of events, and from the testimony presented at the hearing, it is clear that Mr. Gray, and the students who were associated with him, knew that the Nominating Committee of Senate was holding a closed meeting. Their first purpose in being there was declared to be to get the Committee to meet in open session.

Although there is no evidence presented to us that Mr. Gray and the students forced themselves into the meeting room, there is no doubt as well that they intended to stay there if the Committee had assembled and attempted to continue. They were told by Mr. McDougall that it was a closed meeting and that they should leave. They did not do so until they realized that the Committee was not going to assemble there.

Mr. Gray led the students through the various reception areas to the door of the Principal's office. There is no question of his being there in order to see the Principal on some private or academic matter. He was there, in concert with others, for the purpose of imposing a meaningful, i.e., threatening, physical presence on the Committee while its members attempted to deliberate. He was at least twice ordered to leave, he thrice returned, the last time to stay in the Principal's office. The occupation of the Principal's office, even though it lasted only for the duration of the meeting, was clearly a trespass in the circum-

surrounding the meeting of the Duff-Berdahl Committee meeting on June 25th, 1968. At the June meeting there is no indication of numbers as large as those on January 24th attempting to force their way into the meeting room. In the morning session on June 25th, Mr. Gray and five or six students were permitted to sit in as observers at the request of the Executive of the Student Council who were then presenting a brief. In the afternoon session, Mr. Gray and one student sat as assistants to the Executive, again at the specific request of the Executive. We have to assume that Mr. Hajaly, and the officers of the Student Council, genuinely desired the advice and consultation of Mr. Gray at the June meeting. There is no evidence that anyone on the Nominating Committee needed or asked for Mr. Gray's advice on January 24th.

We must conclude that the business of the Nominating Committee was delayed because of a deliberate attempt to disrupt the meeting if certain demands were not considered and met. If this is not actual disruption, it is certainly an attempt to do so.

### 2. Board of Governors Meeting

Our assessment of these events will be very brief. There is no question but that Mr. Gray participated with some one hundred and fifty students in a disorderly and noisy demonstration which prevented the transaction of the meeting's business. There is no doubt of their refusal to leave the meeting room when required to do so by the Chancellor and the Principal, both then in the exercise of their duties. There is no question that the group failed to leave following a resolution that the spectators should withdraw. Although it is not stated in the charge, there is no question as well that Mr. Gray was one of the leaders, or one of the leading elements.

Mr. Gray does challenge the assertion that he forced himself into the meeting without presenting an admission ticket, because he says that he did have one and waved it at the guard. We have no hesitation in saying that the manner in which he obtained the ticket, the circumstances in which he waved it in the air, his own declaration that he was not prepared to use the elevator and present the ticket at the door and thereby commit an "individualistic" act, prove that his assertion is bogus. Although it was not Mr. Gray who shoved the security guards aside to obtain entry to the corridor in front of the meeting room, there is also no question but that he was acting in concert with those who did, and that the actions of one taint the actions of all. Moreover, a person who knows that a door is forcibly opened, cannot feign innocence and claim that he entered legitimately. Furthermore, according to a description of the scene by Mr. Gray's witnesses as well as those of the university, there was not even a pretense on the part of Mr. Gray and the group of students to present their tickets at the door of the meeting room. There is just no question but that this was forcible entry.

We have a situation here where a considerable number of people act in concert to commit a trespass. We have a situation where a considerable number of people so conduct themselves as to raise a reasonable fear in the minds of reasonable men that the peace would be disturbed, and it was actually being disturbed. There is no question but that the sheer force of their physical presence was intended to coerce the Board of Governors into considering their demands. There is no question but that a crowd of about one hundred and fifty jeered, shouted, hurled insults, and was generally disorderly. There is no question but that the meeting of the Board of Governors was disrupted.

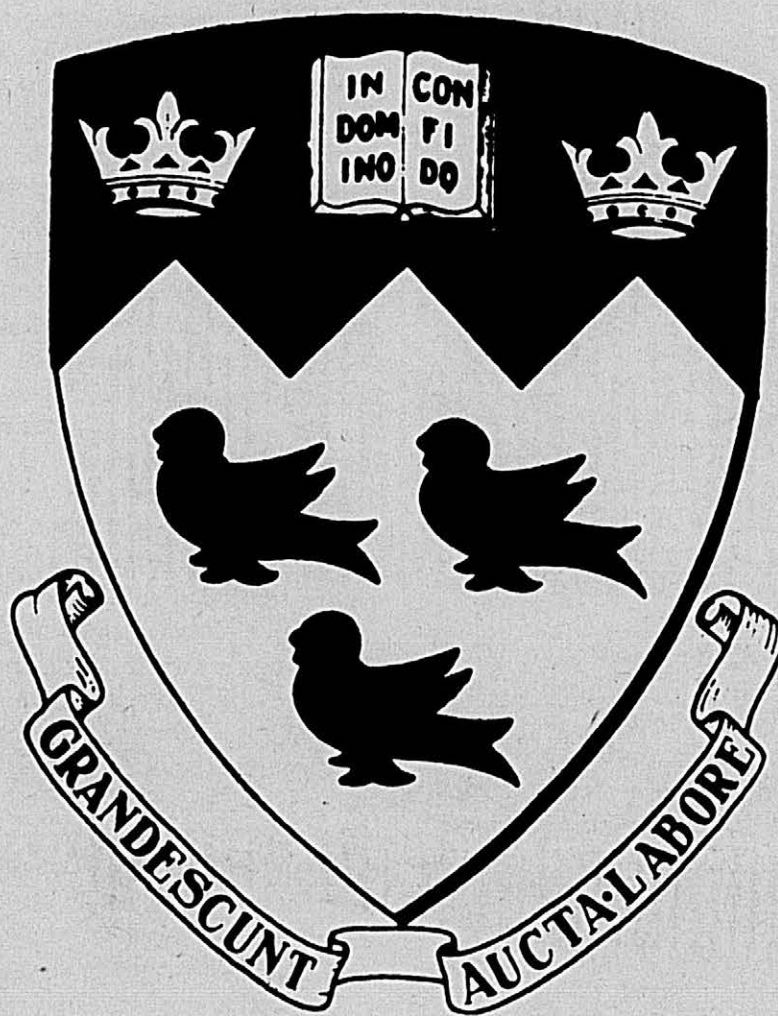
### 3. Meeting of the Senate

If we follow the same definitions which were implied above in distinguishing between attempts to disrupt and an actual disruption, we would have to come to an initial conclusion that the Senate meeting on February 5th was not disrupted. At the

most this could be an attempt to disrupt. There is no question as well that, unlike the situation on January 24th and January 27th, once a formal request to leave was made, Mr. Gray and the students left the meeting room.

This brings us to the much more difficult question of the nature of Mr. Gray's involvement in this event. The facts are

conclude that although Mr. Gray was in the group of students behind Mr. Feingold, and although he did gesture to individual students to approach him, it was probably more for the purpose of following what was happening than for the purpose of doing his part in an organized activity. This is confirmed by his refusal, on the grounds that he was not involved, to be interviewed



clear that Mr. Gray had split from the majority of the members in RSA because they had refused to add a further demand which he felt was necessary to make the programme sufficiently important. There is no doubt that he did not consider himself that afternoon to be a part of the majority, and that they did not consider him at that stage to be one of them. However, the evidence is also clear that Mr. Gray was in favour of the presentation of those demands that were left on the programme, subject to the addition of a more serious point. Mr. Feingold, who did read out the demands, was in the dissenting minority with Mr. Gray, but at the last minute felt compelled to read them out. It is possible that, like Mr. Feingold, although not considering the demands to be sufficiently important, in the circumstances of the moment, with the demands being presented in any case, Mr. Gray may have assumed that it was better to go ahead with what was happening rather than to walk out on it. On the other hand, to give Mr. Gray the benefit of the doubt on this issue, we would

by the CBC outside the meeting room.

In any case, as we stated earlier, on motion of the Senate the spectator area was cleared. Moreover, in the testimony of the various witnesses, there was not such evidence of shouting and jeering as to amount to a noisy or disorderly demonstration. The event would seem to be one in which one individual spoke in a voice loud enough to bring the Senate meeting to a halt, but in which the group of people behind him did not deliberately make any noise to attempt to disrupt the meeting.

Our conclusion, therefore, is that Mr. Gray's involvement in the events of February 5th are not such as described in the third charge specified in the letter of February 18th.

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## PART II

Did Mr. Gray wilfully impede the business of the university in such a way that his conduct affected adversely or was likely to affect adversely the well-being of the university, because it constituted "gross misconduct"?

There is no question but that Mr. Gray acted wilfully. Assuming this, we have been presented with two conflicting views, both of which we find too extreme, and both of which we reject.

Counsel for the University have urged that we are faced with a simple contract dispute, no different from any other contract of service. We were urged that if we find Mr. Gray acted wilfully in the events we are concerned with, that in itself is sufficient ground for considering the contract broken and thus terminated. We have been told that we are faced with a purely consensual relationship; that McGill University is a voluntary community to which one is free to adhere or not. If Mr. Gray does not like what McGill is or does, then he should leave. No one is keeping him. "While remaining inside the community he has no status to dispute its legitimacy." With respect, we cannot agree.

In the first place, this view is a direct threat to academic freedom. If accepted it would emasculate the academic function itself, both in its research and teaching aspects. This point is so fundamental that it requires the considerable elaboration we have given it subsequently.

Even apart from the question of academic freedom a university is not merely a voluntary consensual institution. It is a public institution, in which the faculty has a responsibility not only to the administration but to society at large. Although a university must assert that autonomy which is necessary for its existence as a free university, it is subject to the ultimate control of the legislature over its constitution, dependent at least partly upon public funds, owing a duty to itself and to other universities to be equally open to all who can meet its entrance requirements.

Obviously, in order to meet the requirements of academic freedom, and the needs of society, a university must also be subject to critical assessment, particularly from within. Criticism or advocacy of change, even efforts bringing about change cannot in themselves be grounds for considering that the relationship between a university and one of its faculty members must be terminated.

Moreover, as Mr. Gray argued, and we must agree, it was the university that chose to place its case upon the test of "conduct which affected adversely or was likely to affect adversely the well-being of the university." This is not a test that can be applied without a searching analysis of what a university is, what its well-being is, and what is contrary to that well-being. Regretfully, on this issue as on the question of the role of a university and its relationship to academic freedom, counsel for the University failed to help us. Indeed, we consider the onus was mainly upon the University to make an effort to present us with a highly competent perceptive exposition of these crucial issues. All the more so since we indicated repeatedly that we would welcome such an exposition.

On the other hand, we cannot accept that a university is as such a political institution like every other political institution merely because it increasingly does research for society or because it trains most of the specialists or professionals which society needs. We cannot accept, therefore, that direct action within

the university is merely a political activity which is justified when a person or group decides that the university is following the wrong course, or when the university does not meet unilaterally defined and unilaterally applied criteria.

In rejecting both extremes it is incumbent upon us to attempt to set out what a university is or should be; what, as a result, academic freedom means; and therefore, in what circumstances direct action is justifiable. Without being too detailed, it is necessary for us to make certain assertions which we believe reflect the prevailing views amongst university teachers in Canada. Even though we have read some of the considerable literature on the subject not only on this continent, but in Europe as well, the responsibility for this decision is ours. Our remarks will necessarily reflect our own interpretation of what we believe to be the "common law" relating to universities, academic freedom, and the justifiability of direct action within this context.

### 1. The University in Contemporary Society

Traditionally, academics like to refer to the university as a "community of scholars." If this definition was ever apt, it has become increasingly less so. This is partly because with the "knowledge explosion" and increasing specialization, the university process is no longer just an exchange between scholarly equals, divided only by age. It is true that a professor can learn from a freshman student, and that a graduate student usually knows more about his particular piece of research than does his supervisor. However, it is essentially a teach-learn process in which university teachers are expected to know more about the particular subject areas of their discipline than their students do.

There are two other, and for the purposes of this award more important, ways in which the university is no longer just a "community of scholars." The first is that increasingly the universities have become centres of knowledge accumulation and knowledge transmission — the major skills needed by society, the major discoveries and innovations are almost exclusively the preserve of universities or at least university-trained personnel.

The other, which may be partly the cause of the former, and partly the result of the former, is that increasingly society through its organized institution — the state — pays for the costs of university education and operation. In the nineteenth century the bulk of university costs in North America were met by endowments, gifts, and tuition. Today, even the most heavily endowed university on this continent, i.e., Harvard, cannot continue without serious curtailment of operation, unless it receives some state aid, research grants, and other subventions. With the importance of property taxes in the running of municipal institutions, even if a university were completely endowed, the fact that its property is tax exempt, means that it is subsidized by the state. If society, through the state, is to continue to pay for the university, it must be forced to do so, or convinced that it is necessary to do so.

To some extent the university may force the state to pay by the very threat of ceasing to function. But is there any other threat? Certainly not physical force. The force of the threat of ceasing to function is determined by the extent to which the university can convince society that the university is indispensable. Or, in other words, society will pay only if it, or at least the majority of its decision makers, are convinced that it is necessary to do so.

Therefore, the university cannot now cease to function as the training centre for society's most skilled and professional members. If this makes it partly a political institution, it is probably only a reflection of the fact that with growing concentrations of wealth, people, and technology, more and more activities affect the body politic and thus become "politicized." Added to this is the pressure from the students to make the

university "more relevant" to what they see as the real problems of today. While the university must respond to the needs of its students and society, there is always a danger that free research, the relevance of which might not be immediately evident, will be suppressed or seriously curtailed. Painful experience has shown that even in the physical or natural sciences, but more particularly in the social sciences and humanities, effective research must be free (i.e. not dictated) research, at least to some minimal degree.

If society were perfect, perhaps there would be no need for further research and study to examine it critically. Until that happy day arrives, however, there is need for continual study, analysis, re-assessment, criticism, and the proposing of alternative programmes of action. Thus, although the university is no longer merely a cloistered "community of scholars," and cannot be, it, or an important segment of its personnel, must strive for as much of that detachment which a cloistered community of scholars may have had as would enable critical analysis of the society not to be stifled. In other words, a university must play its part in meeting the needs of society, but always in terms of being able to urge what society's needs are. It is for this reason that those directly involved in universities have striven to enshrine "academic freedom." It is not for the purely selfish benefit of academe, but for the benefit of society. Indeed, because there is always a danger to free inquiry in a university arising from meeting the immediate needs of society, it is necessary that increasing emphasis be given in the governance of a university to the "community of scholars" ideal.

### 2. Academic Freedom

Several things flow from the above. In the first place, an important element of academic freedom must be protection of an academic's right not only to criticize society, but also to criticize his own or another university. The threat to academic freedom can come not only from the non-academic world, but from within the university itself. Therefore, if criticism of one's university is "disloyalty," then we must say that we recognize that there may be circumstances in which an academic has not only a right, but a duty to be "disloyal." We would rather state it in these terms — loyalty to the "ideal of what a university should be," must override the nineteenth century view of loyalty to one's own university *uber alles*.

Another point which flows from the above description of the essence of a free and critical university is that the governing structures, the decision-making bodies, had to change, indeed, were overdue for change. They are changing. Nineteenth century universities could be said to be privately owned, often by religious groups, sometimes by donors, or at least by those deemed worthy of being trustees of the endowment. To that extent, University Boards of Trustees or Governors continued into the 1960's to exhibit religious or benefactor domination. If those who pay have some right to be involved in the decision-making, since today the main payer is the taxpayer, he has a right to be involved. To that extent, the transformation in Canada of Boards of Governors or Trustees was overdue. To too great an extent they did not, and often still do not, truly reflect the society which pays for the costs of universities. Thus, advocacy of change in the composition of governing bodies became necessary. Even if it had not, such advocacy must be protected.

Furthermore, because of the danger that as society's demands upon the university impinge ever more greatly, and so free inquiry and free advocacy of ideas and programmes become restricted, participation in Boards of Governors by elected representatives of the community of scholars becomes necessary to counter-balance too close a direction by outside forces.

Similarly, the Senates, which had gained

increasing autonomy in determining purely academic, as distinguished from purely financial, interests of the University, were largely composed of those people that Boards of Governors would entrust with such decision-making. And this was too exclusively the predominantly administrative, as distinguished from the predominantly academic, personnel within the university itself. Being dependent upon the good-will of Boards of Governors for their positions and finances, it was natural that most Senate members felt more accountable to the Governors than to the university community. Therefore, decisions affecting purely academic matters, e.g., course offerings, course contents, research areas, etc., were made too extensively on the basis of administrative and financial factors rather than on the educational implications of the explosion of knowledge. As a result, Senates become open to more meaningful faculty and student representation. This, too, was overdue. Again, even if it were not, the advocacy of such transformation must be protected.

As the university strives to meet the needs of society, its members, i.e., faculty, students and administrators, must receive greater protection for their right to criticize not only the society, but the university itself, and to promote alternative goals. As stated earlier, this is not for the benefit of any member of the university community as much as for the benefit of society. It is for this very reason that the status of a tenured faculty member makes his contract of service unique. In order to protect his independence of inquiry, speech, thought, and action against restriction by society, his colleagues, and his students, his contract of service cannot be terminated except for incompetence or gross misconduct. And it should be stressed that his own infringement of the same rights of others can amount to gross misconduct.

This, then, brings us to the question of whether academic freedom protects resort to direct action, or at least certain kinds of direct action.

### 3. Academic Freedom and Direct Action

Direct action is a notoriously loose term which covers a variety of activities. We would attempt to define it in terms of the intent and the act. Whatever the act, the intent is to achieve a result which has not otherwise been achieved. The act may vary from attempting to achieve the result by oral persuasion — all the way to coercion by resorting to brute physical force and/or weapons. Actually, the current usage of the term contemplates only those situations where the act was something more than mere speaking, and usually requires collective action. It follows then, that direct action can cover the spectrum from what has been called "symbolic free speech," e.g., the wearing of a black arm-band to protest the war in the Viet Nam, through strikes and sit-ins, to the use of weapons in order to overthrow an institution. Clearly, symbolic free speech must be considered as one of the fundamental liberties in any free society and thereby included in academic freedom; whereas armed force could only be justified in the most extreme circumstances, and then not so much because of the needs of academic freedom, as because of the needs of the liberties of society as a whole. Therefore, one cannot determine in the abstract whether direct action comes under the protection of academic freedom, either as the first, or only as the ultimate measure. The answer must be determined by: (1) the nature of the direct action taken; and (2) the circumstances in which it is taken.

Direct action is not lawful or unlawful, *per se*. It depends upon the act, and in some cases upon the intent. Are the means or the ends unlawful? It must be emphasized that it is not the task of this Committee to determine guilt or innocence on criminal charges, nor to determine delictual liability.



However, as a test of the seriousness of certain forms of direct action it is pertinent to consider which activities the law forbids. For this purpose we will look only at the possible criminal charges. It will not be an exhaustive survey, and will not deal with the more serious offences arising out of the use of weapons, nor even physical force, nor the causing of injury to person or property. It will illustrate, however, that direct action can be unlawful even though is merely the threat of violence or disorder, or even a merely threatening presence.

Again, we must emphasize that it is not our function to determine criminal responsibility. It is incumbent upon us, however, to stress that "direct action" is a term sometimes used to obscure the nature of acts which, if subjected to closer examination, acquire a more precise and more pejorative definition.

It is unlawful for three or more persons with an intent to carry out a common purpose to assemble in such a manner or so conduct themselves when assembled as to cause persons in the neighbourhood of the assembly to fear on reasonable grounds that those assembled will disturb the peace tumultuously, or will by that assembly needlessly and without reasonable cause provoke other persons to disturb the peace tumultuously (Criminal Code, Section 64).

It is unlawful, when not in a dwelling house, to cause a disturbance in or near a public place by fighting, screaming, shouting, swearing, singing, or using insulting or obscene language. (Criminal Code, Section 160).

Everyone who wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he has a lawful right to do, or to do anything that he has a lawful right to abstain from doing, uses violence or threats of violence to that person, or besets and watches the place where that person works or carries on business or happens to be, commits a summary conviction offence, unless his only purpose is to obtain or communicate information (Criminal Code, Section 366 (1) (a) (f), and (2)).

Two or more persons who conspire to effect an unlawful purpose or to effect a threat of violence, or disorder, or even threatening presence, can be a criminal act.

In the case we are concerned with, Mr. Gray's actions were deliberately effected in concert with others. On the 24th of January, Mr. Gray and the students failed to leave the Principal's office and area when ordered to do so. This is the unlawful (although not criminal) act of trespass and so could bring the actions of the group within the definition of a criminal conspiracy in Section 408 (2) of the Criminal Code, even though the purpose to be effected might have been lawful. Their actions on that day could amount to watching and besetting within the terms of Section 366 of the Criminal Code.

On the 27th of January the actions of Mr. Gray and the students could be considered under the two sections mentioned above, as well as causing a disturbance (Section 160), and participating in an unlawful assembly (Section 64). In addition, since security guards were "bowled over," or at least forcibly pushed aside, questions of common assault (Section 231) could be raised as well.

As we have asserted earlier, a faculty member must be free to criticize society or his university, and to advocate change in either or both. We would include "symbolic speech" in this, i.e., pamphlets, circulars, symbols, placards, and peaceful marches, parades, or public gatherings. As long as symbolic speech does not incite disorder, or cause disorder, there is no question that it must be protected. However, and especially in a community which emphasizes the sanctity of free pursuit of knowledge and its rational application, anything more than "symbolic free speech", especially if coercive or intended to be

coercive, must be justified. In other words, more extreme or more physical forms of direct action could be included in the protection of academic freedom, but we believe that the onus for justifying resort to more extreme forms must lie upon those who argue for their inclusion within this protected freedom by showing that circumstances were such that direct action became imperative.

We reject a justification based upon the mere assertion that direct action works. Robbery with violence works, too. The test must be with what consequences, at what cost, what are the alternatives, what are the circumstances?

There can hardly be a valid comparison with the justifications for direct action by students in other countries where there was no other effective political opposition to the governments, or where government policy may intrude far more directly into the university than is the situation in Canada. Nor is there the same deprivation or loss of identity as faced by the black students in Cornell or Columbia, which can explain or justify their actions. This is why the article "The Student as Nigger" is not so much obscene as it is an insult to the Negro. It is a denigration of the seriousness of the plight of the Negro to compare the "deprivations" of a student in North America to the deprivations of the black man.

Mr. Gray proposed to us that unless an institution (1) discusses the issues faced by it; and either (2) is democratically constituted; or (3) meets the needs of its constituents, direct action may be resorted to as a first step.

If we were to accept Mr. Gray's preconditions without further qualification we would have to accept the proposition that the sole judges of whether these conditions exist are the actors themselves. We cannot accept this. If these conditions were merely subjectively determined, anyone could act at any time that he feels moved even though everyone else rejects the validity of his assumptions. Regardless of how sincere the actor's personal convictions may be, surely some form of outside verification of the justifiability of his actions is necessary. Moreover, we have been specifically selected for, and charged with, determining whether in this case such conditions existed at McGill University as to justify the direct action that Mr. Gray resorted to.

Therefore, we consider it indispensable that the institution (or its governing bodies) be shown not to respond to the demands of a democratically constituted majority of its constituents, or be impervious to such demands for change. In the case of a university it is necessary to show that a majority of: the outside community, the faculty, and the students, request or demand the change; and that after some reasonable time-lapse, there is no move to respond.

In this determination we have considered the arguments raised by Mr. Gray, and by Professor Walker in his paper on "Direct Action and Intellectual Freedom" (Document C-4), that even if direct action cannot be justified in disrupting the teaching process at a university, it is a different matter when it disrupts the administrative process. How can this argument be made by the very people who urge that the administrative function directly affects the academic function?

It is impossible to divorce the administrative procedures and structures of a university from its educational and research role. Research is too costly and time-consuming, teaching involves too many students, to be able to operate without extensive administrative structures. We may want different administrators, we may want greater faculty and student participation in the governing and decision-making bodies, but our modern universities, necessarily meeting varied needs, cannot exist without the smooth and efficient functioning of their administrative bodies.

If we look to the meetings which concern us here, our point will be clear. The

Nominating Committee of Senate is not purely administrative; among other things it is concerned with selection of Deans — a process as directly affecting academic matters as administrative ones. The original, and still main, concern of the Senate is with the academic affairs of a university. The Board of Governors would seem to fit less easily into our scheme, but two of the demands presented by the SAC, which the Board of Governors would have to discuss, i.e., student housing and the Faculty of Management, are directly tied in to academic concerns.

We would have to agree that disruption of the teaching or research process is more readily recognizable as inimical to academic freedom, but we cannot conclude that academic freedom is not in jeopardy when the administrative process is disrupted. It is still, as we said earlier, a matter of assessing the nature of the direct action in the light of the surrounding circumstances.

#### 4. Assessment of Mr. Gray's Conduct in the Light of the Principles We Have Set Out.

For this assessment, let us take the various demands that Mr. Gray and those he associated with, raised:

1. Greater representativity in the governing bodies.
2. Openness of meetings.
3. Student housing.
4. Abolition of the Faculty of Management.
5. Removal of certain individuals from the Board.
6. McGill Français.

1. Greater representativity, etc. — As unrepresentative as Senates and Boards of Governors may have been, there is no evidence that at any time there has been a groundswell of public opinion outside the universities to change them. If one takes Mr. Gray's condition that a university must respond to the society outside, the sad fact from the students' point of view is that there is less sympathy for their involvement in decision-making amongst those outside the university than there is amongst those within it.

Pressure for change has come almost exclusively from within the academic community itself, and then, significantly, only within the last three to five years. We would add that at McGill there has been a continuing discussion for about three years of the question of greater representativity, and that the majority of the Senate is now composed of elected faculty members. As far as student parity on Senate is concerned, there is no evidence of widespread agreement between students and faculty on this issue. The Board of Governors has not yet become truly representative, but is moving in that direction and, at the moment, no more slowly than at most Canadian universities.

From the documents submitted to us, from the evidence submitted to us, and from our own knowledge, there is nothing to indicate that the structural changes at McGill have been any slower or less fundamental than at most Canadian universities. In fact, some of the changes at McGill preceded those effected in most universities. They may not yet be as complete as some groups wish, but there is not such evidence of immobility as would justify direct action going beyond speech, or "symbolic speech."

2. Openness — The demands for open meetings of Boards of Governors, Senates, and their committees, have not been made by the community at large, even if the communications media may have asked for it. Some members of the academic community have demanded some open meetings, and that, only within the last two years. The McGill Board of Governors is probably the first in Canada to hold an open meeting. The McGill Senate is one of the first to do so as well.

More specifically, as far as the question of the openness of the Nominating

Committee is concerned, surely the Quebec community did not demand it. There is no evidence, either, that a majority of the McGill faculty, or even of the Canadian academic community as a whole, is in agreement on this issue. And, as a matter of fact, the McGill Senate itself, which now has a majority of elected faculty members, specifically rejected it.

Even if we were concerned only with the issue of whether the Nominating Committee itself was or was not in favour of such a proposal, there was no opportunity to find out whether this was so prior to January 24th, 1969, because that was the first meeting of the newly constituted Nominating Committee. Two students, who stated that they were in favour of open meetings, were on the Committee. Apparently several faculty members on the Committee were in favour. How then, can one state that by January 24th there was such evidence of intransigence amongst the members of the Nominating Committee as to justify, as a first step, an action which was clearly intended to be physically coercive, whether one defines the action as "disruption" or merely "attempted disruption?"

3. Student housing — What evidence is there to justify disruptive direct action? The topic was on the agenda for the Board of Governors' meeting of January 27th. The Senate had directed Vice-Principal Shaw to investigate the issue. Vice-Principal Shaw had discussed the matter with students, with officers of the Student Council, with other administrative officers, and with public officials. He had prepared a report on the issue. Thus, even though we can assume that this was an issue which had widespread support as being an important item to do something about, there is no evidence whatsoever of unreasonableness or immobility on the part of the administrative or decision-making officers. To the contrary, the evidence shows a conscientious and expeditious attempt to meet the problem.

4. Abolition of the Faculty of Management — This is one case where it is possible to conclude that the decision-making bodies were not about to accede to the demands of Mr. Gray and the groups he was associated with. However, what evidence was there of democratic majorities demanding such action? Certainly none from the faculty, nor from a majority of Quebec society. The only support Mr. Gray draws upon is a Student Council resolution which calls upon the university to retain the Faculty, but to change its emphasis. Mr. Gray says this amounts to the same thing as demanding its abolition. However, it must be remembered that the demands of the SAC, which he helped to draft, called for using the proposed site for co-op housing. So, even if his interpretation of the Student Council resolution were to be accepted, and we do not say it should, the SAC demand is more extreme and more immediate.

On the other hand, the sort of transformation which might be envisaged by the Student Council resolution would take several years to implement. Even at this stage, half a year later, it is impossible to conclude that this could not happen, although perhaps one could venture a guess that Mr. Gray's stated desire to see the Faculty of Management transformed into a "Socialist" Faculty of Management seems unlikely to occur in the near future.

#### 5. Removal of Specific Governors and

6. McGill Français — We are dealing with these two demands together not so much because they are related, as because our assessment of the support for them is the same. Again, no evidence was submitted of widespread demand for either action amongst students or Faculty members at McGill. In fact, as Mr. Gray admitted at the hearing, there is evidence that a majority

Continued on page 8



at McGill is opposed to "McGill Français." Moreover, there could not have been verifiable evidence on January 27th to indicate what the reaction to the "McGill Français" demand was, as it had just been formulated, and was not even spelled out in the SAC programme.

As far as the students associated in the 27th of January Movement are concerned, there is no evidence that they knew of the "McGill Français" demand, and no evidence that they demanded the removal of certain governors. Thus, even amongst that group of students associated with Mr. Gray on January 27th, admittedly only about one hundred and fifty out of a total McGill enrolment of over thirteen thousand, there were some who did not feel strongly enough about either issue to include it in the jointly prepared list of demands (Document G-45).

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In this discussion we are being mindful of the fact that unlawful or violent means to bring about change may legitimate themselves if successful. If unlawful direct action, which is initiated by a minority, receives the backing of the majority and thereby succeeds in bringing about change, or, brings about change and then succeeds in getting majority support, then it will be forgiven or amnestied. It will then, in effect, operate to make lawful retroactively what was unlawful originally. However, this is because the cause proves itself to be just, and/or because the majority ratifies it as such. This does not mean merely that those who initiate direct action take a chance. What it does mean is that factors which subsequently are accepted as justifying the actions, and which are present throughout, may not be evident until later.

Perhaps years later, or by a subsequent change in society, the events at McGill may be legitimated retroactively. However, as a quasi-judicial tribunal subject to review by the Courts of this Province, although we must take into account the law as it is at the time this decision is rendered, we must be restricted to the facts and conditions as they existed at the time the charges were made.

The demands presented, the evidence of the amount of support for them amongst students, faculty, and the people of Quebec, the nature of the response to them by the decisionmaking bodies at McGill are not, in our opinion, such as to justify the type of direct action resorted to at the times

pertinent to the issues before this committee.

On the facts and circumstances as we have ascertained them, and in the light of what we have said about direct action and the preservation of academic freedom, we must conclude that the events of January 24th and 27th, particularly as they involve a faculty member, as distinguished from a student, are not justifiable.

A crucial factor in our assessment is Mr. Gray's status. We suggest that there are fundamental distinctions between the responsibilities of a faculty member and those of a student. We do not feel called upon, however, to make any comment with respect to student responsibility or accountability. That is not the issue before us. Nor do we accept an argument that a distinction must be made merely because students pay and a faculty member is paid. But we do feel that there are at least three important reasons why the position of a faculty member is different, and in particular, why Mr. Gray's position was different.

In the first place, whether because of his status as a faculty member, or because of his self-asserted superior ability to express himself, or because "he thought his views out more carefully", there is no question but that Mr. Gray considered himself to be one of the leaders or leading elements of the SAC and the RSA. To use a Marxist phrase, he was one who was consistently in the vanguard. Therefore, his responsibility must be the greater.

Second, in order to advocate and promote his policy, Mr. Gray had available to him his own association, the MAUT. He refused to work through the MAUT because he dismissed the overwhelming majority as being too conservative for him. If a person has available to him a means which has proved effective on most campuses, surely the onus must be upon him to show why he avoided using it. No evidence was submitted to us that the MAUT was undemocratically constituted, did not discuss the important issues, and did not respond to the needs of its constituents. It is too arrogant and unacceptable merely to say that the Association is too conservative to be worth bothering with.

Third, we are concerned with an individual who has been engaged for the purpose of at least stimulating students to thought, if not also teaching them something. We must expect such a person to use first that power which he has been endowed with, for which he is paid, and to which he is professionally committed, and that is rational argument and persuasion. More than in the case of a student, a faculty member must show that the times and circumstances were such that rational persuasion was ineffective and therefore violent direct action had to be resorted to. Almost from the time he started teaching at McGill, Mr. Gray worked his way into leadership roles with student groups in order to prosecute policies of confrontation through them. There is no evidence that any restriction was ever placed upon Mr. Gray to express his views and to advocate his programmes, either orally or in writing.

We want to reiterate that the demands referred to earlier could be put forth by faculty members or students. Undoubtedly academic freedom includes the right to make such demands, as well as the right to parade or assemble in furtherance of these demands, even if they are unreasonable. Our sole restriction here is that the disruptive direct action, which was adopted by a faculty member, was not justified in the particular circumstances as they existed.

### PART III

#### THE DISPOSITION OF THE CASE

In conclusion, therefore, we decide that Mr. Gray impeded the business of the University affecting adversely its well-being because the manner and the circumstances in which Mr. Gray acted constituted gross misconduct.

The issue of waiver was raised and we must deal with it. It is necessary to distinguish between those situations in which a person in authority knows of transgressions of regulations but chooses to ignore them, which amounts to waiver, and those cases where a person in authority points out to the transgressor that he is doing or had done wrong, but is being forgiven in the hope or understanding that the transgression will not be repeated. This is not waiver. It may be generous forbearance, or it may be a forbearance resulting from a negotiated amnesty, e.g., the Political Science strike-lockout, but it is not waiver.

In this case we feel that there has been no waiver. In fact we feel that repeated warnings had no dissuading effect whatsoever, and that Mr. Gray's statements at the hearing emphasized that no future admonition would dissuade him from the course of action he adopted. There is no doubt that he deliberately chose to ignore admonitions from persons in the exercise of their duties. Furthermore, he asserted at the hearing that he would decide for himself whether or not their statements, requests, and orders were worthy of consideration. Although we accept that there are times and circumstances when such conduct would be justified, in our opinion, at the times and in the circumstances pertinent to this hearing, such conduct is unacceptable and was unjustified.

Although the university was scrupulous in following the CAUT Code, we feel that the Code should require the Principal and / or Dean to discuss cases such as these with the Head of the Department concerned prior to the first formal meeting with the faculty member required by Article C-4 of the CAUT Code.

In addition, we feel that it was incumbent upon the Principal not to be satisfied merely with public warnings given in the heat of action. We feel a Principal owes enough respect to a faculty member to discuss their differences in private and thus to emphasize the seriousness of the course of conduct adopted by the faculty member. The Principal ought to have called Mr. Gray into his office at some time prior to February 11th. Although we cannot conclude that this would have deterred Mr. Gray from the course of action he chose, and which he does not repudiate, in other instances this might prevent a situation as serious as the present one from developing.

According to article C-6 of the CAUT Code, if the arbitration committee should decide that there is cause, they should award dismissal or such other remedy as they see fit, and they may include in their award that, notwithstanding the dismissal, the faculty member's salary and the university's contribution to his pension be continued for a period not exceeding one year from the date of dismissal.

For reasons discussed we come to the conclusion that there is sufficient ground for disciplinary action. We believe it would be naive at this time, in view of Mr. Gray's declared intention to go on, to come to a conclusion that he could be persuaded that his course of conduct is unacceptable, and that he should instead resort to his powers of intellect and expression to achieve his aims. Therefore, we reluctantly conclude that there is sufficient ground for dismissal.

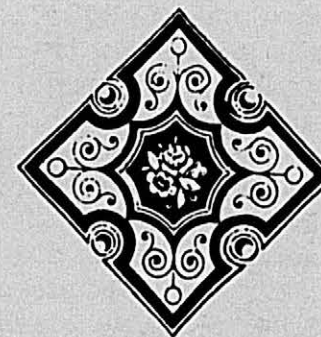
At the same time, we believe that McGill University should pay him the equivalent of his salary and the University's contribution to his pension for the balance of the 1969-70 academic year. Unlike people in most other professions, an academic must make his engagements by the spring preceding the start of a new academic year. Although it is not the fault of McGill University that these hearings have taken so long that the award is only being made in August, yet the cost to a university in these circumstances cannot equal the severity of the loss to a person of a whole year's salary. We feel that dismissal is punishment enough to an academic without also condemning him to be unemployed and without salary for nearly a year.

We understand that Mr. Gray has the option of accepting a Canada Council Award for graduate study in the academic year 1969-70. If we are correct in this assumption, and if McGill University ascertains that the award will not be revoked, then we decide that the University should pay to Mr. Gray, in the week following his dismissal and upon his vacating his office, the difference between the amount of the award and the sum that would be due to him in salary and pension benefits from the date of his dismissal to the end of the 1969-70 academic year.

If we are wrong in our assumption, and Mr. Gray so proves to McGill University within one week from the date of his dismissal, then the University must, upon his vacating his office, pay him the whole of the salary and pension benefits that would be due to him from the date of the dismissal to the end of the 1969-70 academic year.

DATED at the City of Montreal this 15th day of August, A.D. 1969.

Walter S. Tarnopolsky  
Noel Mailloux  
André Morel



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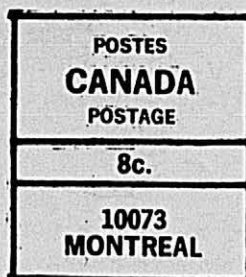
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